

REMARKS

In the Office Action mailed June 6, 2008, claims 1-20 were rejected on the same grounds as stated in the previous February 6, 2008 Office Action. Claims 1-3, 8, 11-14 and 18 were rejected under 35 U.S.C. §103(a) as being obvious over Shah (U.S. Pat. No. 6,595,430) in view of Kunihiisa (Japanese Pat. App. Pub. No. 2001-153891, see English translation included with the 8/2/2007 Office Action) in further view of Cairns et al. (U.S. Pat. No. 7,158,109). Claims 4, 5 and 15 were rejected under 35 U.S.C. §103(a) as being obvious over Shah in view of Kunihiisa in view of Cairns et al. in further view of Deutscher et al. (U.S. Pat. App. Pub. No. 2004/0001106). Claims 6 and 7 were rejected under 35 U.S.C. §103(a) as being obvious over Shah in view of Kunihiisa in view of Cairns et al. in view of Deutscher et al. in further view of Cottrell (U.S. Pat. No. 6,502,758). Claims 8-10, 16, 17, 19 and 20 were rejected under 35 U.S.C. §103(a) as being obvious over Shah in view of Kunihiisa in view of Cairns et al. in further view of Ratz et al. (U.S. Pat. No. 5,203, 497).

Independent claims 1, 13 and 18 recite at least one shaded region (or a means or step for illustrating the same) that defines an operational time period and, within the at least one shaded region, an unshaded region (or a means or step for illustrating the same) that defines a preset temperature range centered about a temperature set by a user and shows a range in plus or minus degrees from the temperature set by the user for a magnitude of the preset temperature range configured by the user. In other words, the claim language as presently structured recites that the preset temperature range (defined by the unshaded region) is defined within the operation time period (defined by the shaded region). The operational time period and the preset temperature range are related together by way of the shaded and unshaded areas.

In making an obviousness rejection, the Examiner bears the burden of establishing a prima facie case of obviousness based on the prior art. The Examiner can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992) (citations omitted). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be

some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007), citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). To facilitate review, this analysis should be made explicit. *KSR*, 127 S.Ct. at 1741. When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – including all its limitations – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974)).

The Office Action fails to identify a shaded region that defines an operational time period in any of the cited prior art references. The information conveyed by the shaded region and the unshaded region therein according to the present invention is more complex than merely defining a temperature start point for a compressor, as explained in the Office Action. Rather, the present invention provides an alternative to the prior art by allowing relatively complex thermostat control capabilities with both operational time parameters and preset temperature range parameters in an elegant and easy-to-use display.

The Office Action states that “Shah and Kunihiya do not explicitly teach [an] unshaded area within a shaded area.” (Office Action, p. 3). The Office Action further includes a section titled “Response to Arguments”. There, the Office Action stated that “Fig. 2 of Shah clearly shows a shaded region that defines an operational time period.” (Office Action, p. 8). However, these positions are inconsistent, and furthermore Shah does not, in fact, disclose a shaded area in FIG. 2. Rather, FIG. 2 of Shah discloses a “step function” line graph, which merely consists of a line and not an area. (Shah, col. 4, ll. 41-47; FIG. 2).

Cairns et al. discloses an active matrix display, with FIG. 16 of Cairns et al. showing a digital display of the numeral “8” in a conventional manner using shaded and unshaded pixels. However, independent claims 1, 13 and 18 are not so simplistic as to merely discuss a display that uses shaded and unshaded areas. The present claims relate the display of parameters specific to thermostat control in a specific manner. Display of these thermostat control parameters could be overly complex or confusing to users, except that the present invention provides a unique

way of integrating the recited parameters (i.e., operational time period and preset temperature range) into a display using an unshaded region within a shaded region, which allows a relatively large amount of information to be conveyed within a limited space with a relatively low risk of user confusion. Because the resultant display of the present invention provides an elegant and easy-to-read display, there is a risk of hindsight bias in analyzing the present claims. *See* M.P.E.P. §2142. However, properly viewed, the prior art of record does not disclose, teach or suggest the particular display or display method of the present invention.

The Office Action asserts that this argument does not address the combination of the cited art. However, the present arguments point out deficiencies in the *prima facie* case for obviousness set out in the Office action, and demonstrate how the Office Action improperly relies on hindsight to establish the obviousness combination. In particular, Cairns et al. may show shaded and unshaded pixels in a display, but that information alone does not answer the critical question of whether the claim language here is obvious because the analysis provided in the Office Action views parts of the claim out of context, and does not read the claim as a whole in making the obviousness rejection. *See, generally, Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) and M.P.E.P. §2111.

None of the cited references discloses, teaches or suggests each and every limitation of independent claims 1, 13 and 18, which recite an alternative configuration that includes structures and method steps not contemplated by the cited art. Namely, the use of an unshaded area indicative of a present temperature range within a shaded area indicative of an operational time period provides a convenient, easy-to-understand display that is not disclosed, taught or suggested by the cited references. Thus, the rejections of independent claims 1, 13 and 18 under §103(a) should be withdrawn. Notification to that effect is requested.

Claims 4, 5 and 15 were rejected under 35 U.S.C. §103(a) as being obvious over Shah in view of Kunihsa in view of Cairns et al. in further view of Deutscher et al. Claims 6 and 7 were rejected under 35 U.S.C. §103(a) as being obvious over Shah in view of Kunihsa in view of Cairns et al. in view of Deutscher et al. in further view of Cottrell. Claims 8-10, 16, 17, 19 and

20 were rejected under 35 U.S.C. §103(a) as being obvious over Shah in view of Kunihisa in view of Cairns et al. in further view of Ratz et al.

Claims 4-10 depend from independent claim 1 and include all of the limitations of that base claim, claims 15-17 depend from independent claim 13 and include all of the limitations of that base claim, and claims 19 and 20 depend from independent claim 18 and include all of the limitations of that base claim. Thus, dependent claims 4-10, 15-17, 19 and 20 are likewise allowable over the cited art for the reasons given above with respect to independent claims 1, 13 and 18. Deutscher et al., Cottrell and Ratz et al. fails to disclose the limitations missing in Shah, Kunihisa and Cairns et al. Thus, the rejections of those claims should be withdrawn, and notification to that effect is requested.

CONCLUSION

All of the claims are in condition for allowance. The Commissioner is authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 03-0835.

Respectfully submitted,

KINNEY & LANGE, P.A.

Date:

7.16.2008

By:

Austen Zuege

Austen Zuege, Reg. No. 57,907
THE KINNEY & LANGE BUILDING
312 South Third Street
Minneapolis, MN 55415-1002
Telephone: (612) 339-1863
Fax: (612) 339-6580

AZ:kmm